No. 84-310

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

IN THE MATTER OF:

ATTORNEY ROBERT J. SNYDER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE AMERICAN CIVIL LIBERTIES UNION *AMICUS CURIAE*

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INTEREST OF THE AMICUS CURIAE

The American Civil Liberties Union (ACLU) is a nationwide, non-partisan organization of over 250,000 members, dedicated to defending the rights secured by the Constitution and laws of the United States. The ACLU long has been particularly interested in protecting the First Amendment right to freedom of speech. The ACLU has participated, directly or as amicus curiae, in numerous First Amendment cases decided by this Court. This case raises an important First Amendment issue: whether attorneys may be disciplined for their speech to the courts in the absence of proof that the speech poses a clear and present danger to the administration of justice.

With the consent of the parties, indicated by letters lodged with the Clerk of the Court, we file this brief amicus curiae.

STATEMENT OF THE CASE

In March, 1983, Robert Snyder was appointed by the United States District Court for the District of North Dakota to represent a criminal defendant under the Criminal Justice Act (CJA), 18 U.S.C. §3006A (1982). After the proceedings in the case were completed, Snyder submitted to the District Court a claim for services and expenses.

Under the Criminal Justice Act, the Chief Judge of the Circuit Court must review and approve any expenditure greater than $1,000.00. 18 U.S.C. §3006A(d)(3). Snyder's request for compensation was deemed deficient by the Chief Judge of the United States Court of Appeals for the Eighth Circuit and was returned to the District Court with requests that additional information be provided. The claim application was revised and resubmitted. Again, it was rejected by the Chief Judge of the Court of

Appeals as lacking sufficient documentation and returned to Snyder.

Snyder discussed the matter with the secretary of the District Court responsible for processing requests for compensation. The secretary suggested that he write her a letter expressing his frustration with the administration of the Criminal Justice Act. In re Snyder, 734 F.2d 334, 343 (8th Cir. 1984) (en banc). Pursuant to this suggestion, Snyder wrote a letter to the secretary* in which he stated that he was "appalled" by how little money attorneys received for representing indigents. He stated that few attorneys in Bismarck, North Dakota represent indigents because of the low pay. He further complained that not only is the pay inadequate, but also attorneys have to go through "extreme

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* The letter is reprinted as an appendix to the Court of Appeals decision, In re Snyder, 734 F.2d 334, 344 (8th Cir. 1984).

gymnastics even to receive the puny amounts which the federal courts authorize for this work." The letter further stated that he had submitted all the documentation he had concerning his representation and there was nothing else to send. Snyder concluded by stating that he was "extremely disgusted" by the way the Eighth Circuit was handling the matter and instructed the secretary to remove his name from the list of attorneys willing to accept indigent criminal defense work.

Snyder's letter to the secretary of the District Court was forwarded to the Court of Appeals. Upon receiving it, the Chief Judge of the Eighth Circuit wrote to the District Court and requested that it confer with Snyder and "determine if Snyder would retract his disrespectful remarks to the court." In re Snyder, 734 F.2d at 336. Snyder refused and the Court of Appeals issued an order to show cause "why he should not be suspended from the

practice of law in the federal courts for his refusal to offer services under the CJA." In re Snyder, Id. at 336.

After holding a hearing on the matter, the Eighth Circuit found that because North Dakota's plan is entirely voluntary, Snyder was allowed to request not to be assigned cases under the Criminal Justice Act. Id. at 339. Furthermore, it accepted Snyder's agreement to handle future appointments of CJA cases. Id. at 339. In fact, the Eighth Circuit found "merit" in Snyder's complaints about the administration of the CJA. Id. at 338-39.

Nonetheless, the Court of Appeals suspended him from the practice of law in the federal courts of the Eighth Circuit for a period of six months. The court stated that it found his letter to contain "disrespectful remarks" and it concluded that "[w]ithout hesitation we find Snyder's disrespectful

statements as to this court's administration of CJA contumacious conduct." Id. at 337.

Snyder petitioned the Eighth Circuit for a rehearing en banc. The Court of Appeals denied the petition, concluding that Snyder's letter was "disrespectful" and not protected by the First Amendment. Id. at 343. The Court of Appeals, however, stated that because of Snyder's past handling of several CJA cases and his professed willingness to take similar cases in the future, it would vacate the order of suspension and provide an additional ten days for Snyder "to provide a sincere letter of apology to this Court for the disrespectful comments directed to this Court in his letter." Id. at 344.

SUMMARY OF ARGUMENT

The issue in this case is whether an attorney may be disciplined for true statements critical of a court simply because the court dislikes the tone of the statements.* Robert Snyder was suspended from practice solely because the Court of Appeals found his letter to the District Court to be "disrespectful." In re Snyder, 734 F.2d at 337, 343 (8th Cir. 1984). The Court of Appeals agreed with Snyder that there are major problems with the implementation of the Criminal Justice Act. 734 F.2d at 337-341. Nonetheless, the court suspended him because it did not like the tone and words he used in addressing the court.

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*This case also poses important questions concerning the circumstances under which judges should recuse themselves and the notice that is required by the Due Process clauses of the Fifth and Fourteenth Amendments. Amicus is in agreement with the arguments made on these issues in Petitioner's brief.

Speech by attorneys is an essential way of exposing problems in the system and pressuring for reform. By virtue of their knowledge and dealings with the judiciary, lawyers have a unique ability to help improve the administration of justice. At times, attorneys must vigorously advocate their clients' positions and criticize the way in which the courts are treating their clients' cases. See In re Sawyer, 360 U.S. 622, 631-32 (1959). At times, attorneys must speak out about injustices they perceive in the administration of the courts. Such speech serves an invaluable public purpose and is protected by the very core of the First Amendment. See New York Times v. Sullivan, 376 U.S. 254, 270 (1964).

Robert Snyder's letter to the secretary of the district court was exactly the type of speech which should be encouraged. He was writing to a branch of the United States

government for redress of his grievance: his failure to receive prompt payment for services provided to an indigent criminal defendant. Furthermore, his letter complained about the administration of an important government program and the failure of the government to provide adequate representation of indigents. Attorneys perform an essential public function when they complain in this manner. Snyder's letter prompted the United States Court of Appeals for the Eighth Circuit to propose a reconsideration of the manner in which the CJA is implemented in North Dakota. In re Snyder, 734 F.2d at 337-341. Snyder thus was performing the highest mission of the bar in seeking to improve the system.

Speech about courts does not lose its protection just because it is harsh or even disrespectful. In re Sawyer, 360 U.S. 622, 631-32 (1959); Craig v. Harney, 331 U.S. 367,

372 (1947). Courts, like all parts of government, may be criticized, even in intemperate tones. Landmark Communications, Inc. v. Virginia, 436 U.S. 829, 839 (1978).

It is firmly established that speech about courts may be punished only if it poses a clear and present danger to the administration of justice. Landmark Communications, Inc. v. Virginia, 435 U.S. 829, 845-46 (1978); Wood v. Georgia, 370 U.S. 375, 388 (1962); Craig v. Harney, 331 U.S. 367, 372 (1947); Pennekamp v. Florida, 328 U.S. 331, 348 (1946); Bridges v. California, 314 U.S. 252, 262 (1941). Speech never poses a clear and present danger just because it is critical of the courts. In order to discipline an attorney for his or her speech, there must be proof that the attorney's statements actually interfered with a pending judicial proceeding. No such interference is even hinted at in this case.

ARGUMENT

THE FIRST AMENDMENT PROHIBITS A COURT FROM DISCIPLINING AN ATTORNEY FOR EXERCISING HIS RIGHT TO FREEDOM OF SPEECH UNLESS THERE IS A CLEAR AND PRESENT DANGER TO THE ADMINISTRATION OF JUSTICE

A. Robert Snyder's Speech Was Political Speech, Protected by the Core of the First Amendment

The Eighth Circuit was explicit: Robert Snyder was suspended from practice because of the content of his letter to the court and because of his failure to apologize for it. The First Amendment protects "both the right to speak freely and the right to refrain from speaking at all." Wooley v. Maynard, 430 U.S. 705, 714 (1977). Thus, both Robert Snyder's letter to the court and his refusal to apologize for the statements made are constitutionally protected speech.

1. Robert Snyder's letter to the court was speech petitioning government for redress of his grievances, protected by the First Amendment.

The First Amendment to the United States Constitution protects the "right of the people . . . to petition the Government for a redress of grievances." This Court repeatedly has held that the right to "petition the Government for redress of grievances" is "among the most precious of the liberties safeguarded by the Bill of Rights." United Mine Workers v. Illinois State Bar Association, 389 U.S. 217, 222 (1967); Eastern R.R. Presidents Conference v. Noerr Motor Freight, 365 U.S. 127, 137 (1961). Individuals who feel that they are being treated unfairly or improperly by the government are to be encouraged, not punished, for voicing their complaints.

The right "to have one's voice heard and one's view considered by the appropriate government authority" is the very essence of

democracy. Williams v. Rhodes, 393 U.S. 23, 41 (1968) (Harlan, J., concurring). This fundamental right to petition government may not be conditioned by a state upon "the exaction of a price," Garrity v. New Jersey, 385 U.S. 493, 500 (1967), or "punishment," Thornhill v. Alabama, 310 U.S. 88, 101-02 (1940), or "threat of criminal or civil sanctions." Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 559 (1976).

Robert Snyder was suspended from practice solely on the basis of a letter in which he presented his grievances to the United States government. Snyder letter complained to the government about the inadequate sums he received for representing indigents and his failure to receive prompt payment for services provided. The Court of Appeals admitted that Snyder had legitimate grievances concerning the administration of the Criminal Justice Act. In re Snyder, 734 F.2d at 338. In fact, in 1984,

the United States Congress amended the Criminal Justice Act to double the salary paid to attorneys representing indigents under it. Criminal Justice Act Revision of 1984, P.L. 98-473 §1901, 98 Stat. 2185, 2185-86.

Thus, there is no question that Snyder acted responsibly in attempting to air his grievances. His letter was truthful in its assertions; he had a legitimate grievance over the sums of money paid and his failure to receive payment for the work completed. He addressed his grievance to the appropriate government body, the federal courts responsible for administering the CJA. As such, Robert Snyder's letter is speech petitioning the courts for redress of his grievances, protected by the very core of the First Amendment.

2. Robert Snyder's letter to the court was speech about the conduct of government, protected by the First Amendment.

This Court has long held that speech about the conduct of government and its officials is protected by the First Amendment. New York Times v. Sullivan, 376 U.S. 254, 270 (1964). Even apart from his personal grievances, Robert Snyder's letter to the secretary of the District Court was exactly this type of speech: speech complaining about the administration of a government program. Snyder wrote to the secretary of the District Court to complain about the delay in processing payment to attorneys representing indigents under the Criminal Justice Act. His letter also complained about the conduct of the government, the Congress and courts of the United States, in providing for the representation of indigents. He voiced concern that "few attorneys" provide representation because of

the "appall[ing]" amount which the federal courts pay for such work. 734 F.2d at 344. He concluded by expressing "disgust" at the treatment of attorneys by the Eighth Circuit. Id. 734 F.2d at 344.

Every aspect of Snyder's letter was a complaint about the performance of government. It was written, at the suggestion of the secretary in the District Court to whom it was directed, in the hope of encouraging reform in the administration of the CJA. Id. 734 F.2d at 343. In fact, the Eighth Circuit's opinion indicated that Snyder was at least partially successful; the Court of Appeals agreed with him that there was a need to reform the system and referred the matter to the district courts and the Judicial Council. Id 734 F.2d at 339-40.

There is no doubt that Snyder's speech was about a "public question" of enormous social importance. See New York Times v. Sullivan,

376 U.S. at 269 (First Amendment protection for "expression upon public questions"). As this Court stated in Landmark Communications, Inc. v. Virginia, 435 U.S. 829, 839 (1978), "[t]he operation of the courts and the judicial conduct of judges are matters of utmost public concern." The Eighth Circuit acknowledged that the bar has been criticized for its failure to provide effective representation of indigents. In re Snyder, 734 F.2d at 340. Speech attempting to improve the system of appointing counsel to represent indigents is political speech in its classic form, protected by the First Amendment.

Words like "appalled" and "disgusted" are the sort of language that is commonly used in political discourse. Even if it is strong language, that does not deprive it of constitutional protection. See Cohen v. California, 403 U.S. 15 (1971). The First

Amendment always has been held to protect "vigorous advocacy." National Association for the Advancement of Colored People v. Button, 371 U.S. 415, 429 (1963). As this Court declared in New York Times v. Sullivan, 376 U.S. at 270:

> "[There is] a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."

Nor does the speech lose constitutional protection because it was included in a private letter to the secretary, rather than in a public pronouncement. Givhan v. Western Consolidated School District, 439 U.S. 410, 415-16 (1979). Snyder chose the channel for communication which was most likely to be successful and least likely to interfere with the administration of justice.

It is essential that attorneys be able to speak and complain in just the way that Snyder did. By virtue of their expertise and dealings with the courts, attorneys have special knowledge about how the judiciary is functioning. Lawyers must be encouraged to expose problems in the system, not disciplined for doing so. The American Bar Association's Model Code of Professional Responsibility states that: "By reason of education and experience, lawyers are especially qualified to recognize deficiencies in [that] system and to initiate corrective measures." Ethical Consideration 8-1. Attorneys historically have played a crucial role in exposing problems with the administration of justice and pressuring for improvements.

In prior decisions, such as In re Sawyer, 360 U.S. 622, 631-36 (1959), this Court recognized that a lawyer's freedom to criticize the legal system is an integral component of

professional responsibility. In Sawyer an attorney was suspended from practice for one year for criticizing the way in which a federal district court handled certain criminal proceedings. The Supreme Court of Hawaii ordered the attorney suspended for attacking the administration of justice and impugning "the integrity of the judge" and "tend[ing] to also create disrespect for the courts of justice and judicial officers generally." 360 U.S. at 626. This Court reversed the suspension order, strongly affirming the First Amendment right of attorneys to criticize the law, law enforcement agencies, and the courts. 360 U.S. at 631-32. The Court recognized that "oftentimes the law is modified through popular criticism," citing the historical examples of the writings of Bentham and Dickens in helping to change the system. 360 U.S. at 632.

Simply put, speech by attorneys is "the handmaiden of effective judicial administration." Sheppard v. Maxwell, 384 U.S. 333, 350 (1966). Attorneys must be encouraged to speak out to help improve the system and to provide zealous representation of their clients. If attorneys can be punished for criticizing the courts, an irreplaceable source of pressure for positive change will be lost. An attorney, such as Robert Snyder, who calls attention to a serious problem in providing for representation of indigents should be commended, not disciplined.

3. Because Robert Snyder's First Amendment rights include the right not to speak, he may not be disciplined for refusing to apologize.

The First Amendment protects not just the right to speak; it also safeguards the right to refrain from speaking. For example, in West Virginia Board of Education v. Barnette, 319 U.S. 624 (1943), this Court held that students could not be required to participate in daily

ceremonies honoring the flag with words and gestures. Similarly, in Wooley v. Maynard, 430 U.S. 705 (1977), this Court struck down a law which required all motorists to use license plates bearing the New Hampshire state motto, "Live Free or Die." The Court emphasized that the "right to speak and the right to refrain from speaking are complementary components of the broader concept of 'individual freedom of the mind.'" 430 U.S. at 714. See also Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241, 257 (1974).

Robert Snyder was punished for his refusal to speak -- his refusal to utter an apology for the letter he wrote. The Eighth Circuit in its en banc ruling vacated the suspension order for ten days pending receipt of a "sincere letter of apology." In re Snyder, 734 F.2d at 344. His silence, therefore, was the immediate cause of his suspension from practice. But this silence was speech protected by the First

Amendment and the silence cannot constitutionally be the basis for sanctions.

It is unclear what purpose the court thought an apology would serve. If Snyder somehow had interfered with the administration of justice as the Eighth Circuit stated, 734 F.2d at 336, then his apology would do nothing to rectify that wrong. Demanding a "sincere apology" is coercion of conscience exactly of the sort that this Court has disapproved. Because the court of appeals was willing to forego sanctions if Snyder apologized, and since he cannot be punished for his silence, then the court should not be allowed to suspend him when he chose not to speak.

B. No Compelling Government Interest Exists to Justify Punishing Robert Snyder for his Speech

First Amendment rights are not absolute. However, given their enormous importance "only a compelling state interest . . . can justify limiting First Amendment freedoms." National Association for the Advancement of Colored People v. Button, 371 U.S. 415, 438 (1963). Traditionally, the measure of whether a sufficiently compelling interest exists is whether the speech in question poses a "clear and present danger." Schenck v. United States, 249 U.S. 47, 52 (1919); Thornhill v. Alabama, 310 U.S. 88, 105 (1940). In numerous decisions, this Court has held that speech about courts may be punished only if a clear and present danger to the administration of justice is proven. Landmark Communications, Inc. v. Virginia, 435 U.S. 829, 845-46 (1978); Wood v. Georgia, 370 U.S. 375, 388 (1962); Craig v. Harney, 331 U.S. 367, 372 (1947);

Pennekamp v. Florida, 328 U.S. 331, 348 (1946); Bridges v. California, 314 U.S. 252, 262 (1941). "What emerges from these cases is the working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before the utterances can be punished, and that a solidity of evidence is necessary to make the requisite showing of imminence. The danger must not be remote or even probable; it must immediately imperil." Landmark Communications, Inc. v. Virginia, 435 U.S. at 845 (citations omitted).

Speech does not pose a clear and present danger just because it is critical of a court or even "disrespectful." In Craig v. Harney, 331 U.S. at 376, this Court declared, "[t]his was strong language, intemperate language, and we assume, an unfair criticism. But a judge may not hold in contempt one who ventures to publish anything that tends to make him unpopular or to belittle him." A judge cannot

be permitted to shield himself or herself, or the court from all criticism by labelling it "disrespectful" or "contumacious."

In a democracy, government and government officials always are subject to criticism. Any criticism might be regarded as disrespectful. Yet, it is unthinkable in our society that a person could be punished for criticizing the President, or an administrative agency, or a member of Congress, simply because the criticism is vehement or might cause disrespect for the institution. The First Amendment embodies the commitment that good government is achieved through "uninhibited, robust, and wide-open . . . debate on public issues." New York Times v. Sullivan, 376 U.S. 254, 270 (1964). Public respect for government is gained by encouraging individuals to improve government, not by enforcing silence.

It is firmly established that courts and judges are a part of government and that the "law gives '[j]udges as persons, or courts as institutions . . . no greater immunity from criticism than other persons or institutions." Landmark Communications, Inc. v. Virginia, 435 U.S. at 839 (quoting, Bridges v. California, 314 U.S. at 289 (Frankfurter, J., dissenting)). In fact, in this case, Snyder's speech concerned the court's administrative functions, its executive task in implementing the CJA, and not an aspect of the court's adjudicative responsibilities. At the very least, when a court is performing as an administrative body it should be subject to the same criticisms as any similar agency. In re Oliver, 452 F.2d 111, 113-14 (7th Cir. 1971).

In short, speech cannot be punished just because it offends the court and seems disrespectful. In re Little, 404 U.S. 553, 554 (1972). As this Court cautioned, "courts . . .

must be on guard against confusing offenses to their sensibilities with obstruction to the administration of justice." Brown v. United States, 356 U.S. 148, 153 (1958). In Craig v. Harney, 331 U.S. at 376, the Court explained that "the law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate." Speech about courts only may be punished if there is clear proof of an imminent harm. No such risk is even hinted at in the record here.

The Eighth Circuit suggested two ways in which Snyder's speech posed a sufficient harm to justify suspending him from practice. First, the court found his letter to be an "explicit statement of disrespect to the court" and concluded that "[w]ithout public display of respect for the judicial branch of government

as an institution by lawyers, the law cannot survive." In re Snyder, 734 F.2d at 736, 737. At the very least, it is impossible to see how Snyder's speech undermines public confidence in the courts because his letter was sent privately to the secretary and only became public when the Eighth Circuit decided to begin proceedings to suspend him and published the letter.

Furthermore, this Court repeatedly has held that courts cannot use their desire for institutional respect as an excuse for suppressing speech. Landmark Communications, Inc. v. Virginia, 435 U.S. at 842-843; Craig v. Harney, 331 U.S. at 376-77; Bridges v. California, 314 U.S. at 270-71. In Landmark Communications, Inc. v. Virginia, this Court explicitly rejected the contention that preserving public confidence in the courts justifies censoring speech. The Court held that neither the government's "interest in

protecting the reputation of judges, nor its interest in maintaining the institutional integrity of its courts is sufficient to justify the subsequent suppression of speech." 435 U.S. at 841. Even if in some remote way Snyder's speech might cause some individuals to think less of the courts, the appropriate solution is for the courts to improve the administration of the CJA, not to punish the messenger who informed the public of the bad news.

Finally, in the long run, public confidence in the judiciary will be undermined if the public perceives that judges are afraid of hearing criticism and have erected a shield to protect themselves from their critics. As Justice Black observed in Bridges v. California, 314 U.S. at 270-71:

> "The assumption that respect for the judiciary can be won by shielding judges from public criticism wrongly appraises the character of American

> public opinion . . . [A]n enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect."

Every time a law professor or a reporter writes an article criticizing a court decision there is a chance that some people will think less of the judiciary. Yet, it is unimaginable that such critiques ever would be punished no matter how vehement or disrespectful the tone. Snyder cannot constitutionally be disciplined just because he voiced his objections in a letter to the court, rather than published them in the local newspaper.

The second harm mentioned by the Eighth Circuit is that Snyder's "conduct not only constituted disrespect but served as well to impede the orderly processing of attorney fee applications. In this direct sense he has served to impede the effective administration of justice." In re Snyder, 734 F.2d at 336.

The court, however, did not explain how Snyder's letter, which the judge's secretary solicited, impeded the processing of fee applications or the administration of justice. Both the District Court judge and the secretary responsible for administering payments under the CJA submitted affidavits to the Eighth Circuit in support of Snyder. Neither affidavit intimated even the slightest manner in which Snyder's actions harmed judicial administration.

There, of course, is no doubt that courts have a compelling interest in insuring the orderly and fair administration of justice. Speech, however, only may be punished if there is clear proof of an "imminent, not merely a likely, threat to the administration of justice." Craig v. Harney, 331 U.S. at 376; Pennekamp v. Florida, 328 U.S. at 348. Here there is no evidence that Snyder's speech posed

even the slightest threat. He was not interfering with the trial or appeal in any case; his speech did not disrupt any court proceedings. His letter did not delay the processing of any applications for compensation. Even if Snyder wrote a more "respectful" letter, the effect on the operation of the courts would have been the same. In fact, Snyder's letter did not impair the administration of justice, but rather enhanced it by encouraging the Eighth Circuit to reconsider the manner in which the CJA is administered.

This case is not really about undermining public confidence in the courts or impairing the administration of justice. Rather, Robert Snyder was disciplined because the Eighth Circuit was offended by the tone of his letter. Both the secretary who the letter was addressed to and the District Court judge for whom she was working stated that they were not offended.

But the Eighth Circuit was and suspended Snyder because of it. However, in cases such as Cohen v. California, 403 U.S. 15 (1971), this Court has made clear that courts may not punish speech just because it is vulgar or offensive. In fact, if speech is to be effective it often must be offensive in order to gain people's attention and get the message across.

Unless there is proof that an attorney's speech impermissibly interferes with pending judicial proceedings or prevents a fair trial, no discipline should be allowed. Because Robert Snyder's speech did not pose any threat, let alone a clear and present danger, his suspension from practice is unconstitutional.

C. Robert Snyder's Suspension from Practice Violated His First Amendment Rights

Like other citizens, attorneys are entitled to the full protection of the First Amendment. In re Sawyer, 360 U.S. 622 (1959); Konigsberg v. State Bar, 353 U.S. 252 (1957); Schware v. Board of Bar Examiners, 353 U.S. 232 (1957). Courts violate the First Amendment if they discipline attorneys for their speech in the absence of a clear and present danger to the administration of pending judicial proceedings. Robert Snyder was suspended from practice based solely on his letter and his refusal to apologize. Because there was no compelling interest, no clear and present danger, to justify the government's conduct, his suspension violates the First Amendment.

If attorneys are to perform their crucial role in working to improve the administration of justice, they must be encouraged to speak out and expose problems in the system. Robert

Snyder's suspension delivers a message to all attorneys that advocacy for their clients risks grave sanctions. The expression of ideas, crucial messages about the need for reform and improvement, inevitably will be chilled. The First Amendment requires that attorneys be allowed to speak, even vigorously, to improve the courts and society.

CONCLUSION

For the foregoing reasons, the judgment of the United States Court of Appeals for the Eighth Circuit, suspending Robert Snyder from the practice of law in the courts of the Eighth Circuit for six months, should be reversed.

Respectfully submitted,

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